IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WA.No. 638 of 2006()

AGAINST THE JUDGMENT DATED 07.03.2006 IN W.P.(C) 6662 OF 2006.

APPELLANT/PETITIONER:

K. SODARAN, S/O. KANNAN,
SREEKRISHNA NILAYAM, THAZHAMEL,
ANCHAL P.O., KOLLAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED
BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SALE TAX OFFICER, PUNALUR, KOLLAM.

3. THE DEPUTY TAHSILDAR, REVENUE RECOVERY
TALUK OFFICE, PATHANAPURAM.

4. THE EXECUTIVE ENGINEER,
ROADS DIVISION, KOLLAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN,J.

W.A. No. 638 of 2006

Dated this the 8th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Appellant calls in question the correctness of the orders passed by the learned single Judge in W.P.(C) No.6662 of 2006 dated 7th March, 2006. While disposing of the writ petition, the learned single Judge has merely followed the judgment in W.P.(C) No.6069 of 2006 dated 1st March, 2006.

2. Appellant before us is a contractor. The respondents had issued a demand notice inter alia directing the appellant to pay entry tax for the two JCBs brought by him into the local area. After receipt of the demand notice, the appellant had requested the respondents to adjust the amount refundable to him towards the demand made in the demand notice. Since that request has not been considered by the respondents, appellant was before this Court in W.P.(C) No.6662 of 2006. Learned Judge had rejected the writ petition following the judgment in W.P.(C) No.6069 of 2006.

3. Payment of tax and claim for refund are two different concepts. The demand notices are issued after the completion of the assessment proceedings. The assessee is expected to pay the demands made by the respondents till such demands are set aside by a superior forum.

4. Refund of tax paid is yet another concept. If an assessee is of the opinion that the respondent - State has to refund the amounts paid by him, he has to

approach them with appropriate representation/application and if, for any reason, the request so made is rejected, he has to approach the appropriate forum for refund of the amount. The Act does not contemplate adjustment of the tax paid. In that view of the matter, in our opinion, the learned Judge was fully justified in rejecting the writ petition filed by the appellant. We do not see any ground to interfere with the orders so passed by the learned single Judge. Therefore, the appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.